

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LENNETT A. OLGUIN and U.S. POSTAL SERVICE,
POST OFFICE, Albuquerque, NM

*Docket No. 02-762; Submitted on the Record;
Issued November 21, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On January 7, 1999 appellant, then a 37-year-old customer service supervisor, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained an emotional condition due to factors of her federal employment.

In an undated statement received by the Office of Workers' Compensation Programs on January 21, 1999, appellant indicated that on March 24, 1998 her eight-year-old son was hit by a van while riding his bicycle and suffered serious head injuries. She described how she became involved in her son's post-injury care and rehabilitation, and indicated that she exhausted, all but two weeks of her leave to take care of him following his injury. Appellant explained that, in the fall of 1998, she enrolled her son in a school that was located across the street from her assigned duty station in order to be near him and assist in his recovery. She stated that she requested and was granted a temporary change from her usual daytime work hours to a work schedule of 4:00 p.m. to midnight because the schedule allowed her to be available during the day to assist her son while he was at school and she returned to work the new hours on September 12, 1998. Appellant stated that on November 16, 1998 her manager informed her effective November 21, 1998, that the temporary change made to her work hours would soon be ending and that she would be assigned to a different station 15 miles away. She indicated that she became upset and anxious and stopped work shortly thereafter. Appellant also described various errors and delays regarding the usage of her sick leave pay on December 13, 17, 18, 23 and 30, 1998. She stated that this also caused her stress.¹ Appellant provided a statement from Joel Wadsworth regarding providing a reasonable accommodation for appellant.

Appellant provided several reports from Dr. Joella G. Tadian, a Board-certified family practitioner, indicating that it was in the best interest of her child for her to be within a two-mile radius as much as possible. In a December 8, 1998 report, Dr. Tadian indicated that appellant

¹ Appellant included documentation concerning her leave usage in the form on an "everything report."

was emotionally upset when she saw her on November 30, 1998. She wrote that appellant stated, "that she could not go on if the postmaster transferred her to another area about 15 miles from where she is now working." Dr. Tadian diagnosed anxiety/depression and wrote that the thought of having to transfer to a station 15 miles away had aggravated appellant's anxiety and caused her to be depressed to the extent that she was unable to work.

By statement dated January 14, 1999, appellant's manager, Marjorie Woodall, advised that appellant had been on various types of leave since her son's accident. She stated that appellant was given family medical leave, sick leave and annual leave from March to September 1998 and when all her leave was exhausted she needed to return to work. Appellant noted that she requested special accommodations in order to fill the needs of her son. Ms. Woodall explained that, in September 1998, the R.J. Pin Station was having rural route counts on all routes and the city routes were scheduled for November 14, 1998. She stated that at that time appellant was accommodated by doing time keeping duties for all employees, extensive research and documentation for all rural routes, and various office duties. However, she explained that these duties were drastically reduced after the route counts were finalized. Subsequently, the Pino Station was only authorized two supervisors, a manager and an associate supervisor. Further, Ms. Woodall indicated that the paycheck error was not intentional and the PS3971 was misplaced for appellant. She explained that on January 7, 1999 she called appellant at her home, after hearing that there was a payroll problem and asked her to come to the office in order to fix the problem. Ms. Woodall explained that appellant came in and they reviewed everything, however, she did not change any of the previous weeks leave requests.

In a February 22, 1999 letter, the Office advised appellant of the additional factual and medical evidence needed to establish her claim and requested that she submit such. Appellant was advised that submitting a rationalized statement from her physician addressing any causal relationship between her claimed injury and factors of her federal employment was crucial. She was allotted 30 days to submit the requested evidence. By letter of the same date, the Office advised the employing establishment to submit factual evidence regarding appellant's claim.

In a report dated January 26, 1999, David A. Peters, a Board-certified psychiatrist, advised that he saw appellant in his office in January 1999. Dr. Peters indicated that it was his professional opinion that appellant suffered from post-traumatic stress disorder. He stated that it was caused by her employer's refusal to continue her changed work schedule and the employer's proposal to transfer her to a workplace that was distant from her son. Dr. Peters indicated that appellant "feels that the actions of her employer have been threatening to her son's life by potentially reducing his maximal recovery from his brain injury." He indicated that appellant was mistrustful of her employer's motives and she also feared for her treatment by her employer.

Appellant forwarded a copy of a March 1, 1999 Equal Employment Opportunity (EEO) complaint.

In a January 5, 1999 report, Dr. Jessica E. Wallace, a licensed professional clinical counselor, who opined that appellant had post-traumatic stress disorder and major depression. She noted that appellant's condition was aggravated by being forced to work in a job away from close proximity to her son and that the incorrect paychecks at Christmas time contributed to the failure of her coping abilities.

By letter dated March 6, 1999, appellant forwarded additional information including her position description, EEO paperwork and Dr. Peters.

In a March 9, 1999 statement, Ms. Woodall, from the employing establishment indicated that initially, with the support of her immediate boss, she could offer appellant work from 4:00 p.m. to midnight due to a heavy workload the station was experiencing. She stated that they were getting ready to count 30 routes and employees and this included every piece of mail that an employee handled. Ms. Woodall explained that everything the employee did was counted and timed and all information gathered had to be input into a computer, verified and distributed to the carrier the next morning. She explained that this task was given to appellant, along with timekeeping, customer problems and miscellaneous other duties, noting that this heavy workload lasted about six weeks. Ms. Woodall indicated that as the workload decreased for appellant, it picked up for the rest of the staff that had to supervise the employees during the day. She explained that she requested help from Joel G. Wadsworth, a national association of postal supervisors' representative, indicating that she did not have enough work for appellant and yet she wanted to help her. Ms. Woodall stated that Joel met with the postmaster and acting manager, customer services operations, to discuss the problem. She indicated that they had several offers for appellant that included: working at the plant, with the hours she was demanding; and the other offers were at other stations. Ms. Woodall explained that the problem became even more complicated due to the fact that the station only had enough service workload credits for two supervisors and a manager. She indicated that they also had an associate supervisor trainee during some of this time that helped and also created more workload. Ms. Woodall confirmed that the reference to appellant's pay was correct as the timekeeper for the station did not have or find documentation to input the correct leave for appellant. She indicated that, after trying to figure out what was needed for appellant, she called her into the station to correct the situation, however, they ended up not correcting any of the previous "errors" that had been a worry to appellant. Ms. Woodall confirmed receipt of the proper documentation to continue her pay.

In an April 29, 1999 decision, the Office found that the evidence was not sufficient to establish that appellant sustained an injury in the performance of duty.

By letter dated May 19, 1999, appellant requested a hearing, which was held on December 1, 1999.

Appellant testified about the events and circumstances following her son's injury in March 1998, consistent with her previous statement to the Office. She attributed her disabling psychiatric condition to being told by her employer on November 10, 1998 that her work hours and work location were being changed. Appellant stated that she had filed an EEO complaint in response to the agency's refusal to continue the accommodations it had given her in September 1998. At the hearing, appellant submitted a report from Dr. Peters dated November 20, 1999.

In his November 20, 1999 report, Dr. Peters indicated that appellant suffered from post-traumatic stress disorder due to being told in November 10, 1998 that the accommodation to her work hours was being ended and that she would be transferred to a work location farther from her son's school. She indicated that upon being informed of the change to her work hours and location, appellant "was terrified that her son may not recoup to his full potential without the degree of help she gave him. Dr. Peters felt his life was jeopardized."

By decision dated February 22, 2000, an Office hearing representative affirmed the Office's April 29, 1999 decision.

By letter dated December 21, 2000, appellant, through her representative, requested reconsideration and enclosed additional information.²

The Office reviewed appellant's claim on the merits and denied modification in a decision dated December 21, 2001.

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.⁵ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁶

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by the physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁷ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that

² The information included: a November 13, 1998 email regarding assignment to new station; a December 8, 1998 memorandum on reasonable accommodations; a December 18, 1998 statement from Mr. Wadsworth; June 16 and December 7, 2000 statements from Larry D. Tiefel; an undated report from Dr. Tadian; an October 19, 1998 report from Dr. Tadian; and a November 9, 2000 report from Dr. Peters.

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

⁵ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁶ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

factor. When the matter asserted is a compensable factor of employment and the evidence of the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁸

In the instant case, appellant noted that the employing establishment changed appellant's work hours from 4:00 p.m. to midnight back to her original shift and to a different post 15 miles from her son's school. The Office has noted that a duty shift may constitute a compensable factor of employment arising in the performance of duty. However, a change in duty shift does not arise as a compensable factor *per se*. The factual circumstances surrounding the employee's claim must be carefully examined to discern whether the alleged injury is being attributed to the inability to work his or her regular or specially assigned job duties due to a change in the duty shift, *i.e.*, a compensable factor arising out of and in the course of employment, or whether it is based on a claim which is premised on the employee's frustration over not being permitted to work a particular shift or to hold a particular position. In this regard, the assignment of a work schedule or tour of duty is recognized as an administrative function of the employing establishment and, absent any error or abuse, does not constitute a compensable factor of employment.⁹ Appellant asserted that she had been permitted to work the 4:00 p.m. to midnight shift in order to allow her more time to care for her son due to a brain injury requiring her to be nearby and that when she tried to explain to the new postmaster why she wanted to keep these hours, he did not care about her needs and did not want to hear her reasons for wanting to leave work earlier. As she, herself admits that her hours had been adjusted in order to accommodate her personal needs outside of work and as there is no evidence that appellant was unable to perform her modified carrier work due to the change in her hours, there is no evidence of error or abuse on the part of the employing establishment in making this schedule change. Appellant's claim has focused on the administrative process by which the employing establishment assigned her to an evening shift to assist her with helping her injured son and not the inability to perform her job assignments due to any change in shift. Her emotional reaction arises from a frustration at not being permitted to work in a particular environment.¹⁰ For these reasons, the Board finds that the change in appellant's work hours are not a compensable factor sufficiently related to the employee's regular or specially assigned employment duties so as to arise in the course of employment.¹¹ Thus, appellant has not established a compensable employment factor under the Act in this respect.

She also described difficulty in matters regarding sick and annual leave when she was sick. The Board has repeatedly held that procedures regarding leave usage, pertain to personnel functions of the employer, rather than to duties of the employee,¹² and are not compensable unless appellant establishes that the employing establishment erred or acted abusively in carrying out its administrative functions.¹³ The employing establishment acknowledged errors in

⁸ *Id.*

⁹ *Helen P. Allen*, 47 ECAB 141 (1995); *Peggy R. Lee*, 46 ECAB 527 (1995).

¹⁰ *Alice M. Washington*, 46 ECAB 382 (1994); *Tanya A. Gaines*, 44 ECAB 923 (1993).

¹¹ *Id.* *Mary A. Sisneros*, 46 ECAB 155 (1994).

¹² *Joseph C. DeDonato*, 39 ECAB 1260 (1988).

¹³ *Thomas D. McEuen*, *supra* note 4.

the leave requests but noted going over the leave with appellant in an effort to remedy the situation. Appellant has not established error or abuse.

Finally, appellant's EEO complaint was accepted for investigation but the outcome is not part of the record.¹⁴

The facts of this case, therefore, do not describe a condition causally related to factors of federal employment. The condition did not arise out of the duties which appellant was employed to perform.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁵

The December 20, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 21, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

¹⁴ See *Eileen P. Corigliano*, 45 ECAB 581, 585 (1994) (finding that the stress caused by the filing and processing of EEO complaints was not compensable).

¹⁵ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).